

5-18-11

To: John West 865-594-6105

From: Ann Stupley 423-869-0271

Sam Lemmons 475-9681 fax to Sam on 5-19-11

13 ~~14~~ pages total

**IN THE CIRCUIT COURT FOR CLAIBORNE COUNTY, TENNESSEE
AT TAZEVELL**

STATE OF TENNESSEE

LARRY ROBERTSON and wife,
KAY ROBERTSON and
DAVID ROBERTSON,

Plaintiffs,

vs.

JAMES SHIPLEY and wife ANN
SHIPLEY d/b/a HICKORY
CORNER DAIRY,

Defendants.

CIVIL ACTION
NO. 11-cv-652

You are hereby summoned and required to serve upon David H. Dunaway, whose address is P.O. Box 280, LaFollette, Tennessee 37766, a true copy of the defense to the complaint which is herewith served upon you, with thirty (30) days after service of this summons upon you, exclusive of the day of service. You will file the original pleading with the court. If you fail to do so, judgment by default will be taken against you for the relief demanded in the Complaint.

Issued this the 3 day of May, 2011.

Witness, Billy Ray Cheek, Clerk of said court, at office in Tazewell, Tennessee.

Billy Cheek
Clerk

D. Spradling
Deputy Clerk

NOTICE

TO THE DEFENDANT: ANN SHIPLEY

Tennessee law provides a four thousand dollar (\$4,000.00) personal property exemption from execution or seizure to satisfy a judgment. If a judgment should be entered against you in this action and you wish to claim property as exempt, you must file a written list, under oath, of the items you wish to claim as exempt with the clerk of the court. The list may be filed at any time and may be changed by you thereafter as necessary; however, unless it is filed before the judgment becomes final, it will not be effective as to any execution of garnishment issued prior to the filing of the list. Certain items are automatically exempt by law and do not need to be listed; these items include the necessary wearing apparel (clothing) for yourself and your family and trunks or other receptacles necessary to contain such apparel, family portraits, the family

Bible, and school books. Should any of these items be seized you would have the right to recover them. If you do not understand your exemption right or how to exercise it, you may wish to seek the counsel of a lawyer. T.C.A. § 26-2-114.

SERVICE INFORMATION

To the process server: Defendant, ANN SHIPLEY, may be served at 4760 Highway 63, Speedwell, Tennessee 37870.

RETURNED

I received this summons on the 3 day of May, 2011.

I hereby certify and return that on the 3 day of May, 2011, I:

() served this summons and a complaint on Defendant, ANN SHIPLEY, in the following manner: Ann Shipley

() failed to serve this summons within 30 days after its issuance because: _____

Wentable Bill Rutherford
Process Server

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AT TAZEWELL**

LARRY ROBERTSON and wife,
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DAVID ROBERTSON,

Plaintiffs,

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JAMES SHIPLEY and wife ANN
SHIPLEY d/b/a HICKORY
CORNER DAIRY,

Defendants.

CIVIL ACTION

NO. 11-cv-652

Filed This 3 Day of May 2011

At 120 O'Clock P M

Betsy Clark Clerk
63

COMPLAINT

Come the Plaintiffs and would show unto the Court the following:

1. The Plaintiffs are citizens and residents of Claiborne County, Tennessee.

At all times mentioned herein, the Plaintiffs were owners of two tracts of property located and/or otherwise adjacent to property owned by the Defendants. At all times mentioned herein, the

2 Plaintiffs were lifelong residents of Claiborne County, Tennessee and maintained a home and farm in what was otherwise a rural and peaceful atmosphere where the Plaintiffs live on Highway 63 near Speedwell, Tennessee.

2 That the Defendants, James and Ann Shipley d/b/a Hickory Corner Dairy, are the owners of a tract of land adjacent to property owned by the Plaintiffs whereupon the Defendants have conducted and are continuing to conduct a dairy operation with annual revenues of 2.5 to Five Million Dollars, employing a staff of approximately 10 to 19 employees.

3. Beginning in the fall of 2008 and continuing through the present, the

Defendants, through their operation of a dairy operation known as Hickory Corner Dairy, constructed a drainage ditch causing silage, manure, and other material to be drained onto the Plaintiffs' property. The Defendants, through their operation of the above-described dairy, have created runoff in such a manner as to cause ponding of polluted and stagnant water with a resulting loss of use of the Plaintiffs' property. The Defendants have otherwise created and are maintaining a nuisance on their property, including but not limited to allowing chemicals and pesticides to be stored in an uncontrolled environment, creating mounds of silage and hay, which are covered with plastic and numerous old tires, which have become filled with water and have otherwise stagnated and have served as a breeding ground for mosquitoes, as well as creating an otherwise undesirable environment on land adjacent to property owned by the Plaintiffs. The Plaintiffs would show unto the Court that beginning in the spring of 2009, an inspection was conducted of the Defendants' property by the State of Tennessee, Department of Environment and Conservation, at which time it was discovered that storm water and drainage from improvements created by the Defendants was causing runoff onto the property of the Plaintiffs and that feed was otherwise flowing from covered areas. On or about May 7, 2009, the State of Tennessee, Department of Environment and Conservation, through its agents, servants, and employees, discovered that the Defendants had created a storm water pond, which was full and overflowing onto the Plaintiffs' property. While evaluating the storm water, the State of Tennessee, Department of Environmental and Conservation, through its agents, servants, and employees, discovered that a ditch had been dug by the Defendants, causing runoff onto the property owned by the Plaintiffs, all of which was in violation of Section 67-3-120(g) of the Tennessee Code Annotated, which is a part of the Tennessee Water Quality Control Act. On or

about May 7, 2009, it was also discovered that the Defendants were maintaining a burial pit for dead cows, which had not been adequately covered with soil, all of which was causing noxious fumes and odors to be emitted from the Defendants' dairy operation, otherwise interfered with the ownership and enjoyment of the Plaintiffs' property.

4. That the Defendants have negligently and otherwise recklessly disregarded the standards of care of the community, including but not limited to the Tennessee Water Quality Control Act and the regulations promulgated thereto, which are incorporated fully herein by reference and will be read in their entirety at the trial of this cause, to wit:

T.C.A. §69-3-101, et seq. known as the "Tennessee Water Quality Control Act"

5. The Plaintiffs would show unto the Court that as a matter of public policy in Tennessee, in the State of Tennessee, the waters of Tennessee are the property of the state and all citizens and residents of the State of Tennessee and are otherwise held in public trust for the use of the people of the state. It is declared to be the public policy of the State of Tennessee that the people of Tennessee, as beneficiaries of this trust, have a right to unpolluted waters.

6. The Plaintiffs would show unto the Court that the dairy operations of the Defendants are near and/or otherwise adjacent to Davis Creek, a tributary which otherwise flows into Norris Lake, has otherwise been utilized by the Plaintiffs, as well as other neighboring property owners, for numerous years.

7. That the Defendants, through their dairy operations, have created and are otherwise maintaining a continuing temporary nuisance on their premises, all of which have subjected the Plaintiffs' property to runoff and pollutants to be deposited onto the Plaintiffs' property.

8. That all of the activities of the Defendants, of which the Plaintiffs complain, have interrupted the use and enjoyment of the Plaintiffs' property, the property of the Plaintiffs has been severely damaged because of the unlawful acts of the Defendants, and the property of the Plaintiffs has likewise been greatly reduced in value.

9. That the actions of the Defendants constitute a continuing trespass, a continuing temporary nuisance, and a private taking of the Plaintiffs' right to the enjoyment of their property, for which the Plaintiffs are otherwise entitled to be compensated.

10. That despite being asked by the State of Tennessee, Department of Environment and Conservation and its agents, servants, and employees, to otherwise correct its

~~daily operations, the Defendants have intentionally and/or maliciously or recklessly continued to~~

~~maintain their daily operations in such a manner as to cause additional damages to the Plaintiffs,~~

~~to cause a diminution in the value of the Plaintiffs' property, resulting in a lost rental value,~~ as

well as inconvenience and injury to the use and enjoyment of the Plaintiffs' property, for which the Plaintiffs should otherwise be awarded punitive damages to otherwise punish the Defendants for their wrongful conduct and to deter such conduct from being conducted in the future.

11. The Plaintiffs would show unto the Court that the Defendants were well aware of the construction of a drainage ditch, which caused runoff to be placed on the Plaintiffs' property. The Defendants did not reveal the construction of this drainage ditch until the same was discovered by the State of Tennessee through its agents, servants, and employees on or about May 7, 2009. The Plaintiffs would show unto the Court that the Defendants, through the use of covered silage and/or hay, had concealed and/or otherwise obstructed the view of this drainage ditch such that the Defendants intentionally concealed elements of their dairy operation in

violation of the public trust.

12. That the Defendants have persisted in the unlawful conduct as heretofore complained with full knowledge of the adverse effects to the Plaintiffs and their property. Despite said knowledge, the Defendants continued in said activities until the present time. The Defendants are therefore liable for punitive damages in addition to all compensatory damages to which the Plaintiffs are otherwise entitled.

WHEREFORE, the Plaintiffs demand:

1. That proper process issue and be served upon the Defendants and that the Defendants be required to Answer this Complaint without verification.

~~2. That the Plaintiffs be awarded such compensatory damages to which they may be entitled under the law and evidence not to exceed One Million Dollars.~~

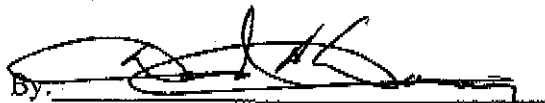
~~3. That the Plaintiffs be awarded punitive damages in an amount not to exceed~~
Three Million Dollars.

4. That a jury determine the issues of this cause.

5. Alternatively, that the Defendants be required to remove all pollutants, old tires, and adverse chemicals and materials, which constitute a private nuisance to the Plaintiffs.

6. That the Plaintiffs be granted such further and general relief to which they may be entitled to under the law and evidence.

LARRY ROBERTSON AND WIFE KAY
ROBERTSON AND DAVID ROBERTSON

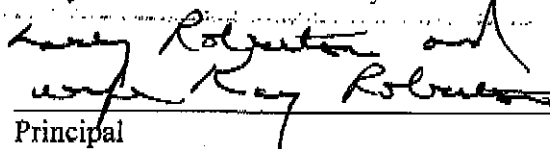
By: 
David H. Dunaway, BPR 0491
Attorney for Plaintiffs

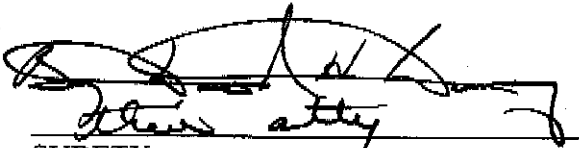
100 S. Fifth Street
Post Office Box 280
LaFollette, Tennessee 37766
LaFollette: 423/562-7085

COST BOND

We acknowledge ourselves as surety for all costs, taxes and damages in this case in
accordance with T.C.A. § 20-12-120.

Larry Robertson and wife Kay Robertson


Principal
4877 Highway 63
Speedwell, TN 37870


SURETY
DAVID H. DUNAWAY
Attorney for Plaintiffs
100 S. Fifth Street
Post Office Box 280
LaFollette, Tennessee 37766
LaFollette: 423/562-7085
Knoxville: 865/524-3670

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Defendants.

CIVIL ACTION

NO. 11-cv-652

Filed This 3 Day of May 2011

At 120 O'Clock P M

Billy Clinic Clerk
DS

PLAINTIFFS' FIRST INTERROGATORIES TO THE DEFENDANTS

**TO: JAMES SHIPLEY AND WIFE ANN SHIPLEY D/B/A HICKORY CORNER DAIRY, AND ALL
DEFENDANTS.**

Please take notice that the Plaintiffs herein request the Defendants to answer the following
Interrogatories within forty-five (45) days from the date of service hereof pursuant to Rule 33 of
the Tennessee Rules of Civil Procedure:

INTERROGATORY 1:

Please identify yourself by stating your name, address and the functions you perform in
reference to the operation of Hickory Corner Dairy in Speedwell, Tennessee.

ANSWER:

INTERROGATORY 2:

Give the names, addresses, telephone numbers, and occupations of all witnesses who have
any knowledge of the occurrences described in the Plaintiffs' Complaint.

ANSWER:

INTERROGATORY 3:

Did anyone other than the Defendants and the Defendants' employees engage in the dairy operations, which are the subject of this litigation?

ANSWER:

INTERROGATORY 4:

If the answer to the previous Interrogatory is in the affirmative, please state the name, address, and telephone number of the company and/or individuals otherwise involved in the dairy operations maintained by the Defendants, otherwise known as Hickory Corner Dairy.

ANSWER:

INTERROGATORY 5:

ESTHERY D/B Please state what precautions, if any, were taken by the Defendants or the Defendants' agents, servants, or employees, to prevent runoff and pollutants from being deposited on the

Plaintiffs' property.

ANSWER:

INTERROGATORY 6:

Please describe in full detail how the alleged occurrences happened, giving all events in detail and the order in which they occurred, before, at the time of, or after the State of Tennessee, through the Department of Environment and Conservation, and its employees otherwise inspected the property of the Defendants on May 7, 2009.

ANSWER:

INTERROGATORY 7:

Please state the name, address, and telephone number of each individual employed by the

Defendants at its dairy operations known as Hickory Corner Dairy for a period of time from September 2008 through the present.

ANSWER:

INTERROGATORY 8:

Did you or your agents, employees, or other representatives ever take or receive any statement, either orally or in writing, from any person, including parties, who had any information or knowledge relating to the alleged occurrences, which are the subject of this litigation?

ANSWER:

INTERROGATORY 9:

If your answer to the previous Interrogatory is in the affirmative, please state as to each such person:

- (a) His/her identity, including name, address, and telephone number;
- (b) The date of any such statement;
- (c) The substance, as best you can give it, of any such statement; and
- (d) If such statement was in writing, either attach a copy hereto or indicate where or when such statement may be examined by counsel.

ANSWER

INTERROGATORY 10:

State the name, address and telephone number of the individual or individuals otherwise responsible for the overall maintenance of the Defendants' dairy operation for a period of time from September 2008 through the present.

ANSWER:Respectfully submitted this 2nd day of May 2011.LARRY ROBERTSON AND WIFE KAY
ROBERTSON AND DAVID ROBERTSONBY: David H. Dunaway, BPR 0491
DAVID H. DUNAWAY & ASSOCIATES
Attorney for Plaintiffs
100 S. Fifth Street
Post Office Box 280
LaFollette, Tennessee 37766
LaFollette: (423) 562-7085
Knoxville: (865) 524-3670**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a true and exact copy of the foregoing Interrogatories were attached and filed with the original Complaint to be served herein.

This 2nd day of May 2011.BY: David H. Dunaway
Attorney for Plaintiffs